APPENDIX

Jurisdictional Statute.

Title 28, Section 347 (a) U. S. C. A.
(Judicial Code, Section 240 (a), Amended.)

"Certiorari to Circuit Courts of Appeals and Court of Appeals of District of Columbia; Appeal on Writ of Error of Supreme Court from Circuit Courts of Appeals in Certain Cases; for Revenues Not Allowed.

(a) In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal.

(c) No judgment or decree of a circuit court of appeals or of the Court of Appeals of the District of Columbia shall be subject to review by the Supreme Court otherwise than as provided in this section."

Sales and Transfers of Bonds.

Schedule A-9 of Title VIII of the Revenue Act of 1926, as added by Section 724 (a) of the Revenue Act of 1932.

9. Bonds, etc., sales or transfers: On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to any of the instruments mentioned or described in subdivision 1 and of a kind the issue of which is taxable thereunder, whether made by any assignment in blank or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale (whether entitling the holder in any manner to the benefit

of such instrument or not), on each $100 of face value or fraction thereof, 4 cents: *Provided,* That it is not intended by this title to impose a tax upon an agreement evidencing a deposit of instruments as collateral security for money loaned thereon, which instruments are not actually sold, nor upon the delivery or transfer for such purpose of instruments so deposited: *Provided further,* That the tax shall not be imposed on deliveries or transfers of bonds in connection with a reorganization (as defined in section 112 of the Revenue Act of 1932) if any of the gain or loss from the exchange or distribution involved in the delivery or transfer is not recognized under the income tax law applicable to the year in which the delivery or transfer is made. *Provided further,* That the tax shall not be imposed upon deliveries or transfers to a broker for sale, nor upon deliveries or transfers by a broker to a customer for whom and upon whose order he has purchased same, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: *Provided further,* That the tax shall not be imposed upon deliveries or transfers from a fiduciary to a nominee of such fiduciary, or from one nominee of such fiduciary to another, if such instruments continue to be held by such nominee for the same purpose for which they would be held if retained by such fiduciary, or from the nominee to such fiduciary, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: *Provided further,* That where the change of ownership is by transfer of the instrument the stamp shall be placed upon the instrument; and in cases of an agreement to sell or where the transfer is by delivery of the instrument assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers. Any person liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person, who makes any such sale, or who in pursuance of any such sale

delivers any certificate or evidence of the sale of any such instrument, or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding $1,000, or be imprisoned not more than six months, or both.

Article 120 of Treasury Regulations 71.

Basis of tax.—The tax accrues at the time of making the sale or agreement to sell or memorandum of sale, or delivery of, or transfer of the legal title to, the bonds, regardless of the time or manner of the delivery of the bonds or agreement or memorandum of sale. The provisions of articles 34 to 39, both inclusive, of these regulations, relating to sales or transfers of stock, are controlling also in respect of sales or transfers of bonds, in so far as consistent with the provisions of Schedule A-9 and in so far as not inapplicable to the matter of sales or transfers of bonds.

Loans of bonds and the return of bonds loaned are subject to tax.

A bill or memorandum such as provided in article 36, is required in respect of every sale or transfer of a bearer bond.

No tax, however, is imposed upon deliveries or transfers of bonds in connection with a reorganization (as defined in section 112 of the Revenue Act of 1932) if any gain or loss resulting from the exchange or distribution involved in the delivery or transfer is, in whole or in part, not recognized for income tax purposes under the law applicable to the year in which the delivery or transfer is made.

Article 34 (r) of Treasury Regulations 71.

Sales or transfers subject to tax.—The following are examples of transactions subject to the tax:

(r) Upon a merger, the transfer of stock owned by a corporation which is merged into another corporation from the name of the first to the name of the second corporation, such a transfer being effected by the act of the parties and not wholly by operation of law.

Articles 35 (h) and 35 (r).

Sales or transfers not subject to tax.—The following are examples of transactions not subject to the tax:

(h) The transfer of stock from the name of a deceased or resigned trustee to the name of a substituted trustee appointed in accordance with the terms of the original trust agreement, which is a transfer resulting wholly by operation of law.

(r) Transfers of shares or certificates of stock which result wholly by operation of law are not subject to the tax. Transfers of this character are those which the law itself will effect without any voluntary act of the parties, such as transfer of stock from decedent to executor.

Protection of Holders of Guaranteed Mortgages (Schackno Act).

Laws 1933, c. 745.

An Act to provide for the protection of holders of mortgage investments guaranteed by title and mortgage guarantee corporations and investment companies. (L. 1933, c. 745, as amended by L. 1933, c. 780; L. 1934, c. 92; L. 1934, c. 906; L. 1934, c. 909; L. 1934, c. 919; L. 1935, c. 588, in effect April 27, 1935.)

1796. Legislative declaration of fact and policy

1. The legislature hereby declares the existence of a public emergency affecting the health, safety, and comfort of the people requiring the provisions of this act, arising out of the following circumstances. Approximately one billion of dollars in principal amount of real estate mortgage investments, sold, issued, distributed or guaranteed, directly or indirectly, by title and mortgage guaranty corporations or investment companies organized and now existing under the insurance law or banking law, respectively, are now outstanding; and such mortgage investments are widely held by hundred of thousands of investors, a large percentage of whom are persons of only moderate means. As a result of the existing disruption of economic and financial proc-

esses, rental values have declined so sharply that it is impossible in many cases for owners of real estate to meet their obligations on the bonds, mortgages or other security against which mortgage investments have been issued guaranteed by such guaranty corporations, directly or indirectly. Numerous defaults aggregating millions of dollars have occurred in the payment of interest and principal on such mortgage investments and on the bonds, mortgages and other security against which such mortgage investments have been issued; and wide-spread additional defaults are likely to occur therein. Under existing conditions any immediate liquidation of any substantial amount of such bonds, mortgages or other security in respect to which such defaults exist, or the attempt to do so, would so demoralize the general real estate market that there might be realized on such bonds, mortgages or other security substantially less than the face amount thereof and substantially less than would be realized if they were disposed of in an orderly manner over a reasonable period of time. Since the guaranty corporations are obligated to pay the amount of the deficiencies resulting from the liquidation of such bonds, mortgages or other security at less than the face amount thereof, the forced liquidation of the bonds, mortgages or other security would result in such unprecedented demands upon the resources of the guaranty corporations that their resources would be sufficient only to pay a relatively small portion of such demands. The guaranty corporations are not amendable to the federal bankruptcy law; and the holders of mortgage investments cannot avail themselves of the composition provisions of such bankruptcy laws for the settlement of their claims against such corporations in respect of guaranties undertaken by such corporations. The guaranty corporations are subject to control and regulation by the state and to the supervision of the superintendent of insurance or of the superintendent of banks.

It is therefore hereby declared to be essential for the public interest to provide a procedure under which such bonds, mortgages or other security may be liquidated in an orderly manner and under which the assets of the guaranty corporations may be administered and conserved equally and ratably in the interest of holders of mortgage investments.

1801. Reorganization

1. When the superintendent shall have exercised any of the powers granted to him under section three or four of this act, he or the holders of fifteen per centum in principal amount of such mortgage investments (exclusive of any part thereof held by the guaranty corporation which sold such mortgage investments), or a corporation organized under article twelve of the insurance law, as added by chapter four hundred fifty-three of the laws of nineteen hundred thirty-three, may promulgate a plan or agreement, for the readjustment, modification, or reorganization of the rights of all of the holders of such mortgage investments, and the modification, readjustment or liquidation of the bonds, mortgages or other security against which such mortgage investments have been issued. Such plan or agreement shall be deemed to have been duly promulgated when the signatures of the required number of holders of such mortgage investments or their agents duly authorized shall appear on such plan or agreement or upon a written consent setting forth the substance of such plan or agreement. Such signatures may appear on any one copy of the plan, agreement or consent or may appear upon co-nterparts or separate consents if the aggregate signatures shall represent the required number. The names of the promulgators shall appear on the copy or summary to be submitted to the holders of such mortgage investments as herein provided. The superintendent shall thereupon obtain from such guaranty corporation a list of the holders of such mortgage investments. He shall thereupon submit such plan or agreement to all of the holders of such mortgage investments on such list by mailing a copy thereof (or a summary thereof prepared by him) to each such holder or to his duly authorized representative addressed to him, postage prepaid, to the address provided in such list, or if no such address be so provided, then to his last known address. He shall also mail such copy or summary to each other person or corporation known to the superintendent to have an interest which may be affected by the proposed plan or agreement. A copy of the plan or agreement shall be kept by the superintendent at an office of such superintendent avail-

able for public inspection, and he shall take such other steps as he may deem necessary for making the plan or agreement and all notices and facts in connection therewith available to all interested parties. (As amended by L. 1934, c. 919, in effect September 7, 1934.)

1-a. Any holder of a mortgage investment who desires in good faith to promulgate a plan or agreement of reorganization as provided in the preceding subdivision may, upon notice to the superintendent and the appropriate guaranty corporation, apply to the court, which, if satisfied as to the good faith of the applicant, shall order such guaranty corporation to furnish to such applicant a list of the holders of the mortgage investments who would be affected by such plan; but such list shall be retained by such applicant for the purpose specified and shall not otherwise be disclosed or published. (As added by L. 1934, c. 906, in effect August 31, 1934.)

2. The superintendent shall prepare and mail to each such holder and each such other party, either with a copy of such plan or agreement or summary, or at any time subsequent thereto, a notice stating in substance that such plan will be presented to the court as hereinafter provided for, and designating a date, which date shall not be less than twenty days after the mailing of such notice, when such court will pass upon such plan or agreement and hear any objection thereto on the part of any holder of such mortgage investments or such other party as may have an interest therein.

Upon the return date of such notice, the superintendent shall indicate to the court whether or not he approves or disapproves such plan or agreement. The court shall hear the parties interested therein and, if it deem it necessary, may take testimony relative thereto and/or may take proof in affidavit form or through a referee appointed for the purpose as to any fact or circumstance material thereto. If a referee be appointed, he shall make and file a report with the court with all convenient speed. The costs of such reference shall be borne by such of the parties in such amounts as the court shall direct. The court shall there-

upon approve, modify or disapprove such plan or agreement. No such plan or agreement shall become operative unless and until it shall have been approved, in its original or in a modified form by such court, and unless and until the holders of two-thirds in principal amount of such mortgage investments (exclusive of any part thereof held by the guaranty corporation which sold or guaranteed such mortgage investments) or their agent duly authorized, shall have consented to such plan or agreement. (As amended by L. 1935, c. 588, § 1, in effect April 27, 1935.)

3. When any such plan or agreement shall have been so approved by the court and by such two-thirds in principal amount or their agent duly authorized therefor, such plan or agreement shall be binding upon all the holders of such mortgage investment and the guaranty corporation which shall have sold or guaranteed the same; and all the holders of such mortgage investment shall be conclusively deemed to have consented to all of the terms and conditions of such plan or agreement whether or not all of such holders shall actually have consented and whether or not all of them shall have received notice of such plan or agreement or of such hearing as hereinbefore provided. Thereupon such steps shall be taken by the superintendent and all other parties, and all acts shall be done as may be required by such plan or agreement so approved and as may be necessary or desirable for the consum-ation of such plan or agreement.

4. The expenses of the printing and mailing of such plan or agreement or the summary thereof shall be paid as follows: If the plan promulgated be the plan of the superintendent, he shall pay therefor out of any funds which may have come or may come into his possession out of such property. If the plan promulgated be that of the holders of fifteen per centum of such mortgage investments as provided for in this section or if the plan be that of a corporation organized under article twelve of the insurance law, as added by chapter four hundred fifty-three of the laws of nineteen hundred thirty-three then such holders or such corporation shall deposit with the superintendent in advance a sufficient sum of money to pay such expenses, which shall be used by the superintendent for such purposes. If such plan so promulgated by such holders or such corpora-

tion become operative as herein provided the superintendent shall repay to the holders or corporation making such deposit the expenses of such printing and mailing out of any funds which may have come or may come into his possession out of such property. (As amended by L. 1934, c. 919, in effect September 7, 1934.)

1804. Jurisdiction of supreme court

§ 8. The supreme court of the county in which any such guaranty corporation has or had its principal office is hereby vested with jurisdiction and authority to determine the fairness of any plan or agreement which may be promulgated hereunder with respect to any mortgage investments sold or guaranteed by such guaranty corporation and to approve, modify or disapprove the same, provided, however, that where the underlying security or securities, property or properties affected by such proposal or plan is or are located within one county, then the supreme court held in such county shall have such jurisdiction. If a referee be appointed he shall report his determination for confirmation or modification upon such notice as the court shall direct. Such court shall make an order approving, modifying or disapproving such plan or agreement. In the event that the court shall have approved or modified such plan or agreement; and if at the time of the entry of such order the court shall have been satisfied that sixty-six and two-thirds per centum of the holders in principal amount of such mortgage investment or their duly authorized agent have approved such plan or agreement, such order shall recite such fact, and shall thereupon be binding upon all the holders of such mortgage investments and the guaranty corporation which shall have sold or guaranteed them and all of the parties interested therein. If at the time of making such order such percentage of the holders of such mortgage investment shall not have approved of the same, such order shall provide that upon satisfactory proof of the fact that sixty-six and two-thirds per centum of the holders in principal amount of such mortgage investments shall have approved the same, a further order may be entered ex parte approving such plan or agreement, which further order shall be binding upon all the holders of such mort-

gage investments and upon the guaranty corporation which shall have sold or guaranteed the same and upon all other parties interested therein. (As amended by L. 1935, c. 588, § 2, in effect April 27, 1935.)

LAWS OF NEW YORK—BY AUTHORITY.

Chapter 19.

AN ACT declaring the existence of a public emergency, creating the mortgage commission of the state of New York, providing for its powers and duties and providing a method for the relief of distressed holders of mortgage investments

Became a law February 5, 1935, with the approval of the Governor. Passed, on message of necessity, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Article I. Existence of emergency.
II. Creation of mortgage commission.
III. Definitions.
IV. Powers and functions of commission.
V. Exercise of limited powers of commission.
VI. Termination of control of commission.
VII. Jurisdiction of supreme court.
VIII. Continuance and consolidation of certain proceedings.
IX. Miscellaneous provisions.

Article I.

Existence of Emergency.

Section 1. Declaration of emergency.

Section. Declaration of emergency. The legislature by joint resolution adopted April twenty-seventh, nineteen hundred thirty-four authorized the appointment of a special committee to investigate and report with respect to emer-

gency and permanent legislation in connection with guaranteed mortgages. Such committee has held public hearings, examined numerous witnesses, and made reports to the second extraordinary session of the legislature of nineteen hundred thirty-four which, among other things, considered emergency legislation for the relief of holders of mortgage investments and the proper administration of the real property or other security underlying the same. The second extraordinary session of the legislature considered the aforesaid reports but failed to pass adequate remedial legislation as recommended therein. The legislature on the eighteenth day of August, nineteen hundred thirty-four, adopted a joint resolution authorizing the continuance by the special committee of its investigation and directing it to make a further report to the legislature. In addition thereto, the governor at the request of the superintendent of insurance appointed a commissioner, under section eight of the executive law, to investigate, among other things, the management and affairs of the insurance department with reference to the operations, conduct, and management of the title and guaranty corporations under its supervision. The commissioner has submitted a final report to the governor.

The legislature has considered the aforesaid reports of its committee and now finds and determines:

There are outstanding many thousands of issues of mortgage investments, issued, sold, distributed or guaranteed directly or indirectly by title or mortgage guaranty corporations organized and/or operating under the insurance law or by companies organized and/or operating under the banking law. Each of these issues is secured by or represents an interest in a single mortgage or by a group of mortgages as the underlying security. The mortgage investments issued by the respective companies in substance provide that the company has assigned and transferred an undivided share or interest in a bond and mortgage, or in a group of bonds and mortgages or in a debt secured thereby, either as a participating interest or as security for an obligation, and that the company is authorized to

receive, collect and sue for the interest and principal of the bonds and mortgages. It is further provided in the form of the greater number of outstanding mortgage investments that the company is authorized to bring foreclosure actions and in many cases the company is authorized to take title to the properties sold thereunder, but in many cases no provision is made for the conferring upon such companies of adequate trust powers to meet any emergency which may be presented and it is doubtful whether under existing law such adequate power can be conferred.

Orders of the supreme court for the rehabilitation or liquidation of many of the companies, subject to the insurance law or banking law as aforesaid, have been made pursuant to the provisions of the insurance or banking law and both the superintendent of insurance and the superintendent of banks have taken possession, as in such laws provided, of the property of such companies and are administering the bonds and mortgages in respect of which such mortgage investments have been issued and/or guaranteed. The companies in rehabilitation or liquidation sold and/or guaranteed in excess of two-thirds of the aggregate principal amount of all outstanding mortgage investments issued by companies organized under or subject to the provisions of the insurance or banking laws. All of the companies in liquidation or rehabilitation are unable to meet their obligations as they mature. No statutory provisions now exist in aid of liquidation of these companies in furtherance of the former section sixty-three, and the present article eleven of the insurance law, and corresponding provisions of the banking law. The holders of such mortgage investments are asserting a great variety of claims against many of these companies, and also allege that the superintendent of insurance and the superintendent of banks are disqualified to represent them because of the conflict in interest between the companies and such holders.

Many thousands of the mortgages with respect to which these companies have issued mortgage securities are in default either in payment of principal, interest or by reason of failure of the owner to pay taxes. The foreclosure of

all of the mortgages in default would ruinously affect owners of real estate generally and the holders of mortgages or other mortgage investments thereon, would aggravate the existing demoralization in real estate values, and inflict irreparable injury not only upon the holders of mortgage investments but upon the people of the state generally. The situation creates an immediate danger to the economic welfare and the vital interest of the community.

The holders of mortgage investments in many thousands of issues are numerous and it has been difficult to obtain concerted action by them. The department of insurance and the banking department are not sufficiently equipped to enable their personnel to efficiently perform their usual duties and properly carry on their normal functions, and, in addition, to perform the burdensome task of representing the holders of mortgage investments of thousands of separate and distinct mortgage issues which require the proper administration of upwards of twenty thousand parcels of real property underlying the same.

Unpaid taxes are accumulating upon many of the properties subject to the mortgages and penalties for nonpayment thereof are accruing in most instances at the rate of ten per centum per annum. The accumulation of unpaid taxes presents a serious problem to the political subdivisions of the state. Many holders of mortgage investments are receiving no income or little income therefrom and they and their families are in want. The present market for such mortgage investments has depreciated to such an extent that few of such mortgage investments can be sold except at great sacrifice and at distress prices.

The legislature, therefore, hereby declares the existence of a public emergency affecting the health, safety and comfort of the people, requiring the enactment of the provisions of this act. Legislation adapted to meet the emergency by conferring power upon a new state agency to act promptly and to encourage, promote and facilitate self-organization by the holders of mortgage investments until such time as there may be established other effective organizations for the administration of their interests is essential to protect the vital interests of the state.

Article II.

Creation of Mortgage Commission.

Section 2. Mortgage commission of the state of New York.

§ 2. Mortgage commission of the state of New York. An agency, to be known as mortgage commission of the state of New York, hereinafter referred to as the commission, is hereby created. Such commission shall be a body corporate and politic. It shall consist of three members who shall be appointed by the governor with the consent of the senate. The governor shall designate one of such members to be the chairman of the commission. The original appointment shall be made so that the term of the chairman shall expire January first, nineteen hundred forty, the term of one member January first, nineteen hundred thirty-nine, and the term of one member January first, nineteen hundred thirty-seven. Their successors shall be appointed for terms which shall expire January first, nineteen hundred forty. Vacancies in the office of the commission occurring otherwise than by expiration of term shall also be filled by the governor with the consent of the senate for the unexpired term. The chairman shall receive a salary of fifteen thousand dollars per year. The other members of the commission shall receive salaries of twelve thousand dollars each per year. Each member of the commission shall be entitled to his expenses actually and necessarily incurred by him in the performance of his duties. Each member of the commission shall devote his entire time to the performance of his duties. The power of the commission shall be vested in and exercised by a majority of the members thereof then in office. The commission may delegate to one or more of its members, or to its officers, agents or employees, such powers and duties as it may deem proper. The governor may remove any member of the commission for inefficiency, neglect of duty, or misconduct in office, giving him a copy of the charges against him and an opportunity of being publicly heard in person and/or by counsel in his own defense, upon not less than ten days' notice. If such member shall be removed, the governor shall file in the office of the

department of state a complete statement of charges made against such member, and his findings thereon, together with a complete record of the proceedings.

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Article IV.

Powers and Functions of Commission

Section 4. General powers.
5. Limited powers.
6. Functions of commission.*

§ 4. General powers. The commission shall have power:

1. To sue and be sued.

2. To have a seal and alter the same at pleasure.

3. To acquire, hold and dispose of property of all kinds for its corporate purposes.

4. To make by-laws for the management and regulation of its affairs.

5. Subject to the approval of the director of the budget, to use agents, employees and facilities of the state, paying its proper proportion of the compensation or cost, and may use the attorney-general as legal adviser.

6. To appoint and remove agents and employees including counsel, attorneys, engineers, architects, appraisers and accountants and to fix their compensation.

7. To make contracts, and to execute all instruments necessary or convenient.

8. With respect to all bonds, notes or other evidences of indebtedness, mortgages and property referred to in section six hereof, to collect or cause to be collected principal and interest on the bonds, notes or other evidences of indebtedness and mortgages and the rents, income and/or profits of property; to distribute the amount collected after

* So in original. [Does not conform to section heading.]

deduction of expenses of collection and such sums as it deems necessary as reserves for taxes, assessments, water rates and interest, amortization and other obligations with respect to funds borrowed, and to enforce by foreclosure or otherwise any covenant of, or right of action arising out of, the bond, note or other evidences of indebtedness or mortgage.

9. To acquire title to or possession of property covered by a mortgage from the mortgagor or owner by voluntary conveyance or transfer, and/or the rents, income and/or profits therefrom by assignment, or by collection thereof.

10. To purchase at foreclosure or other judicial sales property which constitutes the underlying security for any mortgage under the jurisdiction of the commission and to take title thereto for the benefit of all holders of mortgage investments interested in such mortgage; and on such purchase to apply the amount due on the bond and/or mortgage on the purchase price bid.

11. To operate, manage and rehabilitate by alteration, repair or otherwise any and all properties which are the underlying securities for any mortgage under its jurisdiction and/or to appoint an agent or agents to operate, manage or rehabilitate the same, or to lease the same or any part thereof for a period not exceeding five years, upon such terms and conditions as the commission may deem proper.

12. Where any mortgage under the jurisdiction of the commission confers upon the mortgagor the right to have any property released from the lien thereof upon the making of a specified payment, to execute and deliver such release upon receipt of such payment.

13. To support or oppose in whole or in part any plan of reorganization or other plan, proposal or agreement promulgated by any person, firm or corporation.

14. To withdraw any proposal or to abandon any plan, before approval by the court except in the case of a plan proposed under section ten of this act.

15. To exercise the power conferred on the superintendent of insurance and/or the superintendent of banks by section six of chapter seven hundred and forty-five of the laws of nineteen hundred thirty-three, in connection with a plan or agreement, as therein defined, for the readjustment, modification or reorganization of the rights of all of the holders of mortgage investments, and the modification, readjustment or liquidation of the bonds, mortgages or other security upon which such mortgage investments have been issued.

16. To terminate its functions in respect of and to surrender any bond or mortgage or property held by it to a person or persons or corporation representing all the holders of mortgage investments in respect thereof.

17. To negotiate with agencies of the federal government and the state of New York and any other public and/or private corporation, individual or association for relief, by loan or otherwise, of holders of mortgages and/or mortgage investments. To accomplish this purpose it may organize a subsidiary corporation or corporations having capital stock along such lines as shall make such corporation or corporations eligible to receive loans from agencies of the federal government and/or the state of New York and/or any other public and/or private corporation, individual or association, and to lend moneys so obtained upon the security of mortgages and/or mortgage investments, the voting stock in such corporation to be purchased and held in its entirety by the commission. Any such subsidiary corporation shall be deemed organized when the commission shall have filed in the office of the secretary of state the certificate of authority prescribing the name, plan, purposes, powers and form of organization of such corporation, the amount of the authorized capital stock and the number and par value of the shares of which it is to consist. No filing, recording fee or tax shall be required for organizing such subsidiary corporation. Should a loan be made to a holder or holders of mortgage investments, it shall only be made to such as shall have acquired them prior to March fifth,

nineteen hundred thirty-three, or to those who subsequently received them by inheritance from such holders.

18. To act as attorney in fact, trustee, substitute trustee, or successor trustee, for holders of mortgage investments, by appointment of the court, election of the holders of mortgage investments or otherwise, on such terms and conditions as it shall impose, and may, in its discretion, so act without the acceptance of fees or other compensation.

19. To organize a subsidiary corporation or corporations wholly owned and controlled by it and with trust powers only, to act as attorney in fact, trustee, substitute trustee or successor trustee for holders of mortgage investments by appointment of the court, election of the holders of mortgage investments or otherwise. Such corporation may, in its discretion, act without the acceptance of fees or other compensation. Such subsidiary corporation or corporations shall be deemed organized when the commission shall have filed in the office of the secretary of state a certificate of authority prescribing the name, plan, purposes, powers and form of organization of such corporation, the amount of the authorized capital stock and the number and par value of the shares of which it is to consist. No filing, recording fee or tax shall be required for organizing such subsidiary corporation, nor shall such corporation be subject to the payment of any income or franchise taxes.

20. The commission may require all persons, firms, corporations or guaranty corporations selected as its agents to furnish bond or security satisfactory to it for the faithful performance of their duties.

21. The commission may in its discretion initiate and carry on such studies, investigations and researches as will assist it in recommending the enactment of appropriate legislation designed to increase public confidence in real estate and mortgage investments, lessen the burden of taxation now resting on real property, and provide proper supervision, regulation and control of the issuance, guaranty, sale and distribution of mortgage investments.

22. To do any and all things requisite, necessary or incidental to the exercise of the powers conferred upon the commission by this act.

§ 5. Limited powers. The commission shall have the following limited powers, with reference to mortgages, mortgage investments and real estate under its jurisdiction:

1. To extend the date of maturity of any bond, note, other evidence of indebtedness or of any mortgage, or the date of payment of the entire or any part of any instalment of principal thereof due under a mortgage covering real property under its jurisdiction.

2. To waive, reduce the rate, and/or extend the time of payment of interest payable under any bond, note, other evidence of indebtedness or under any mortgage;

3. To borrow funds for any of the following purposes:

(a) to pay taxes, assessments or water rates and penalties thereon, fire, rent, liability, workmen's compensation and/or other appropriate insurance, and to buy or redeem tax liens and transfers thereof;

(b) to preserve or rehabilitate by alteration, repair, or otherwise the property covered by a mortgage or acquired upon foreclosure or otherwise;

(c) to pay foreclosure costs and expenses or an amount approximating such costs and expenses as consideration for a conveyance from the mortgagor;

(d) to pay any item of cost or expense not particularly specified incident to the maintenance, preservation or protection of any of the several properties being administered by it;

4. To execute, and deliver, in connection with any funds borrowed pursuant to the provisions of sub-section three of this section, its promissory note or other evidence of indebtedness, chargeable to and payable only out of the property for whose benefit such loan was made, and securing the same by a lien upon the mortgage or property affected thereby prior and superior to the right or interest therein of all holders of mortgage investments covering said property, and also to execute and deliver any and all agreements or instruments of subordination, or otherwise, deemed necessary or proper or required to establish the priority of such lien.

5. To sell or exchange any bond, note, other evidence of indebtedness or any mortgage or property acquired by it and/or to release one or more parcels from the lien of any mortgage upon such terms and conditions and for such consideration as the commission may deem proper, including the right to accept as part of the purchase price a mortgage not exceeding sixty-six and two-thirds per centum of the purchase price, payable in not more than ten years;

6. To formulate and carry into effect any plan of reorganization in respect of any bond, note, other evidence of indebtedness and mortgage or property or group thereof acquired by it not otherwise specifically provided for by this section;

7. To exchange the whole or part of any bond or mortgage or property acquired by it, for securities issued or guaranteed by any public corporation now or hereafter organized pursuant to an act of congress and in addition to such securities or guarantees, if obtainable, a junior mortgage to cover any unfunded balance and, if it so chooses to avail itself of any provisions of any act of congress or of any regulation of any department of the federal government with respect of any matter within the jurisdiction of the commission.

8. The foregoing enumerated powers shall be deemed in addition to and not in limitation of the general powers conferred by this act.

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Article V.

Exercise of Limited Powers of Commission.

Section 7. Procedural requirements.

§ 7. Procedural requirements. 1. Whenever the commission shall make any proposal or plan to exercise any of the limited powers specified in section five hereof (except in the exercise of the powers granted by subsection twelve of section four hereof or in subsection four of this section) it shall file a copy of such proposal or plan with the clerk

of the court and shall prepare and mail to each holder of a mortgage investment of the issue concerned addressed by registered mail to him, postage prepaid, to his last address as the same appears on the records of the commission or on the records of the superintendent of insurance and/or of banks, or on the records of the guaranty corporation which issued or guaranteed the mortgage investment of such holders, and if no address of any such holder shall appear on such records, then to his last known address, a summary of such proposal or plan together with a notice stating in substance that such proposal or plan will be presented to the court, and designating a date, which date shall be not less than thirty days after the mailing of such notice when such court will pass upon such proposal or plan and hear any objection thereto on the part of any holder of a mortgage investment. Such notice shall also be published by the commission once, at least twenty days before said date, in a daily newspaper of general circulation published in the county where such hearing is to be had and if no such daily newspaper is published in such county, then such notice shall be published in such other newspaper of general circulation as may be published in said county. Such summary and notice shall also be mailed to any agency of the state or federal government or to any corporation, association or individual, which or who shall have notified the commission that it is pledgee of, or has a lien upon, or an interest in any mortgage investment of the issue concerned. Upon the return date of such notice or any adjourned date or dates thereof, the court shall hear the parties interested therein and may accept proof in affidavit form or otherwise as to any facts and circumstances material thereto. The court upon proof by affidavit that the provisions hereof with respect to mailing and publishing have been fully complied with shall thereupon approve, modify or disapprove such proposal or plan, but in no event shall any such proposal or plan or modification thereof be approved by the court unless the court deems such proposal or plan fair and equitable to the holders of mortgage investments or if written dissent therefrom, duly executed and acknowledged, shall be filed with the clerk of the court prior to such return date, or prior to such other date as may be fixed by the court, by

the holders in the aggregate of more than thirty-three and one-third per centum of the face amount of mortgage investments affected by such proposal or plan. All holders of mortgage investments who have not dissented from the proposal or plan in the manner provided by this section shall be conclusively deemed to have assented thereto. Such proposal, plan or modification thereof shall become effective immediately upon the entry of the order approving the same.

Whenever the plan of reorganization involves any of the acts set forth in sub-sections five, six or seven of section five hereof, (except when the commission exercises any of the powers granted by sub-section twelve of section four hereof or sub-section four of this section) such plan shall contain a provision in respect of dissenters thereto, to the effect that adequate protection will be provided for the realization by them of the value of their mortgage investment as of the date of the promulgation of the plan by such method as will in the opinion of the court, under and consistent with the circumstances of the particular case, be equitable and fair to them.

2. No dissent from any such proposal or plan may be filed by the holder of a mortgage investment whose evidence of such investment has appearing on the face thereof a notation that the commission is authorized without qualification or reservation to represent the holder thereof. Proof of such a notation of authorization shall be made by affidavit of an officer or employee of the commission that such evidence of mortgage investment bears such notation, and upon the filing of such affidavit, any dissent filed by the holder of such mortgage investment shall be disregarded. In case the notation discloses a qualification, reservation, right, or interest in a person, firm or corporation other than the holder, such person, firm or corporation may file dissent to the extent of his or their respective interests.

3. The appellate court to which an appeal is taken by any dissenting holder from any action by the court pursuant to this section shall have the right to impose upon the appellant as part of the costs of the appeal, reasonable fees of counsel for the respondent, and such appellate court may

also, in its discretion, require bond therefor before entertaining any such appeal.

4. The commission may upon such notice, if any, as is hereinafter provided, apply to a judge or court for an order granting authority to sell, out of a group of bonds, notes or other evidences of indebtedness, and mortgages or properties with respect to which mortgage investments are outstanding, one or more of such bonds, notes or other evidences of indebtedness, and mortgages or properties, or to extend the date of maturity of one or more of such mortgages or the date of payment of the entire or any part of any instalment of principal thereof, or to reduce the rate of interest and/or extend the time of payment of interest payable under any such bonds, notes or other evidences of indebtedness, or of any mortgage, or to release one or more parcels from the lien of any mortgage, or to exchange any such bonds, notes or other evidences of indebtedness and mortgages for securities issued or guaranteed by any public corporation now or hereafter organized pursuant to an act of congress and such authority may be granted and such order made if the court finds (1) that the bonds, notes or other evidences of indebtedness and mortgages or properties to which the application refers have a total face value (taking the properties at the principal amount of the mortgages to which the properties were formerly subject) of less than fifty thousand dollars, and constitute less than five per centum of the total face amount of mortgage investments outstanding in respect of such group issue; and (2) that the total face value of bonds, notes or other evidences of indebtedness and mortgages and properties (taken as aforesaid) with respect to which similar applications have been previously made by the commission, and granted, together with the face value of the bonds, notes or other evidences of indebtedness, and mortgages and properties to which the application refers are in the aggregate not in excess of ten per centum of the face amount of mortgage investments outstanding in respect of such group issue.

The commission may also upon such notice, if any, as is hereinafter provided apply at any time for authority to sell for cash any property, where the price is not less than the

face amount of the guaranteed mortgage to which said property was formerly subject, together with interest accrued and foreclosure costs and expenses.

The aforesaid applications may be made ex parte unless any holder of a mortgage investment or committee of such holders shall, in advance, have filed with the commission a request for notice of any such application, affecting any particular series of mortgage investments in which he or they may have an interest, in which event the commission shall give by registered mail to such holder of a mortgage investment or committee ten days' written notice of the application.

5. Notwithstanding any of the provisions of this section, the commission may without application to the court exercise with respect of any bond, note or other evidence of indebtedness, mortgage or property any power possessed by the guaranty corporation at the time of the entry of the order of rehabilitation, in respect of such bond, note or other evidence of indebtedness, mortgage or property.

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Article VII.

Jurisdiction of Supreme Court.

Section 11. The court to pass upon proposal or plan.
12. The commission may designate director of corporation upon reorganization.*
13. Appointment of commission as trustee.
14. Enlargement of powers of trustees.
15. Reclamation of property.
16. Appointment of commission as receiver.
17. General powers of court.

§ 11. The court to pass upon proposal or plan. The supreme court for the county in which a guaranty corporation has or had its principal office is hereby vested with jurisdiction and authority to determine the fairness of any proposal

* So in original. [Does not conform to section heading.]

or plan which may be promulgated hereunder with respect to any mortgage investment guaranteed by such guaranty corporation and to approve, modify or disapprove the same, provided, however, that where the underlying security or securities, property or properties affected by such proposal or plan is or are located within one county, then the supreme court held in such county shall have such jurisdiction. In considering such proposal, the court or a referee appointed by the court shall determine whether such proposal or plan is fair, reasonable and equitable to the holders of mortgage investments and whether it meets their best interests. If a referee be appointed he shall report his determination for confirmation or modification upon such notice as the court shall direct. Nothing herein contained shall affect the jurisdiction of the supreme court held in any county with respect to any proceeding pending in such court at the time this act takes effect.

§ 12. The commission may designate a director of corporation upon reorganization. In passing upon any proposal or plan or agreement proposed under this act or under chapter seven hundred forty-five of the laws of nineteen hundred thirty-three, which proposes in whole or in part the formation or appointment of a corporation to represent the holders of mortgage investments of any issue, the court shall, upon the application of the commission, require the proposal or plan to provide that the commission shall have the right to designate one of the directors of such corporation, and his successors.

§ 13. Appointment of commission as trustee. In passing upon any proposal or plan or agreement proposed under this act or under chapter seven hundred forty-five of the laws of nineteen hundred thirty-three, the court may appoint the commission to act as trustee, substitute or successor trustee.

§ 14. Enlargement of powers of trustees. Whenever pursuant to the provisions of section nine of this act, a trustee or trustees, substitute or successor trustee or substitute or successor trustees shall be appointed by the court, the court

may, in its discretion, from time to time, confer upon such trustee or trustees all or any part of the powers granted to the commission under section five of this act, and such trustee or trustees shall exercise such powers in accordance with section seven of this act.

§ 15. Reclamation of property. The court shall also have jurisdiction, upon petition of the commission, and upon such notice as it shall deem proper, and after hearing thereon, to direct any person, firm or corporation in possession of property the right to the possession of which is by this act vested in the commission, to deliver and surrender such property to the commission.

§ 16. Appointment of commission as receiver. In any action commenced for the foreclosure of a mortgage which the commission is administering or which is being administered under its direction, or for the foreclosure of a mortgage junior thereto, whether such action is instituted by the commission or any other person, firm or corporation, the court may, whenever it is proper to appoint a receiver or to extend a receivership, appoint the commission as receiver, without bond, either upon the court's own motion, or upon motion of the commission. The commission shall not receive any compensation as receiver but shall be reimbursed for its expenses.

§ 17. General powers of court. The court shall also have jurisdiction to make orders in respect of any and all matters as to which court action is hereby provided and to make orders upon the petition of the commission, or of any other interested party, to enforce any provision of this act.

Article VIII.

Continuance and Consolidation of Certain Proceedings.

Section 18. Proceedings under chapter seven hundred forty-five of the laws of nineteen hundred thirty-three expressly permitted.
19. Consolidation of proceedings.

§ 18. Proceedings under chapter seven hundred forty-five of the laws of nineteen hundred thirty-three expressly per-

mitted. Except to the extent provided in section six, this act shall not supersede chapter seven hundred forty-five of the laws of nineteen hundred thirty-three and this act shall not operate to prevent the promulgation and approval of a proposal or plan pursuant to the provisions of section six, seven, seven-a and eight of chapter seven hundred and forty-five of the laws of nineteen hundred thirty-three, as amended, for the adjustment, modification or reorganization of the rights of all the holders of a mortgage investment, and modification, readjustment or liquidation of the bonds, notes or other evidences of indebtedness, mortgages or other securities against which such mortgage investment has been issued. Whenever a proposal or plan of reorganization shall have been approved by the court and shall have become operative pursuant to the provisions of said chapter seven hundred and forty-five, which proposal or plan shall vest either title, possession or control over any property of which the commission shall be in possession, in any other person, firm or corporation, the commission shall terminate its functions in respect of such property and surrender the same as provided in said proposal or plan. The commission shall be entitled to receive upon such surrender reimbursement of all its expenses theretofore incurred by it in respect thereof, as approved by the court, and for which it has not been therefor reimbursed.

Whenever the commission shall promulgate a proposal, plan or agreement pursuant to section six of chapter seven hundred and forty-five of the laws of nineteen hundred thirty-three, it shall specify in such proposal, plan or agreement that the same is promulgated pursuant to chapter seven hundred and forty-five of the laws of nineteen hundred thirty-three, and the provisions of said chapter seven hundred and forty-five shall apply to all further proceedings in respect of such proposal, plan or agreement and the provisions of section seven of this act shall be inapplicable thereto.

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Article IX.

Miscellaneous Provisions.

Section 23. Powers of fiduciaries.
24. Reimbursement for expenses.
25. Liabilities not discharged.
26. Moneys of the commission.
27. Accounting by the commission.
28. Transfer of records.
29. Continuity of jurisdiction.
30. Commission may institute and/or intervene in court proceedings.
31. Power to compel attendance of witnesses.
32. Inconsistent provisions in other acts superseded.
33. Separability.
34. Duration of emergency.*
35. Effective date.

§ 23. Powers of fiduciaries. An executor, administrator, trustee, guardian, committee of an incompetent, or other person, including any official of the state or any political subdivision thereof, holding trust funds, who has lawfully invested any trust funds in or lawfully holds any mortgage investments may deposit the same with the commission and may authorize the commission by such deposit, or by letter of authority, power of attorney, or otherwise, to act for him in all respects in connection therewith or may assent to any proposal or plan submitted to the court under the provisions of this act or chapter seven hundred forty-five of the laws of nineteen hundred thirty-three, and do such acts as may be required by such proposal or plan or may be necessary or desirable for the consummation of such proposal or plan or such acts as may be required to assist the commission to effectuate any of the purposes for which it is organized or any of the acts which it is empowered to perform, may accept in exchange for such mortgage investments, and hold the same as legal investments, any securities or obligations, secured or unsecured, issued pursuant to such pro-

* So in original. [Does not conform to section heading.]

posal or plan as approved or modified by the court; and for such deposit or authorization, or the acts of the commission thereunder, the execution of such instruments, the doing of such acts, and/or the acceptance or holding of such securities or obligations, such executor, administrator, trustee, guardian, committee of an incompetent or other person shall not be subject to any liability whatsoever. Subject to the approval of the court having jurisdiction over the accounting of such fiduciary, any fiduciary may borrow money for the account of the estate being administered by him, upon the security of any mortgage investment.

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§ 34. Duration of the emergency. This act shall remain in force and effect until January first, nineteen hundred forty. No action taken or obligation or liability incurred or undertaken pursuant to the provisions of this act, however, shall become invalid after such date. Any mortgages or property possessed by the commission on January first, nineteen hundred forty, shall thereafter be taken over by the superintendent of insurance if the mortgage investments to which the same refer were issued by a guaranty corporation organized under the insurance law or by the superintendent of banks, if the mortgage investments to which the same refer were issued by a corporation organized under the banking law.

§ 35. Effective date. This act shall take effect immediately.

STATE OF NEW YORK,
Department of State, ss:

I have compared the preceding with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom and of the whole of said original law.

EDWARD J. FLYNN,
Secretary of State.

(3604)